

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

WP(C).No. 25753 of 2007(N)

OS.373/2006 of II ADDL.SUB COURT,KOZHIKODE

PETITIONER:

**THENNANDIYIL UDAYASANKAR,
S/O.THENNANDIYIL SANKARAN, AGED 57,
DEEPTHI, NEAR KANAKASREE AUDITORIUM,
KASABA AMSOM, KARIYAKUNNUDESOM, KOZHIKODE
TALUK.**

BY ADV. SRI.MILLU DANDAPANI

RESPONDENT:

**THENNANDIYIL PURANDARADAS,
S/O.THENNANDIYIL SANKARAN, AGED 51 YEARS,
UDAYAPURAM, KASABA AMSOM, KARIYAKUNNU DESOM,
KOZHIKODE TALUK.**

**BY ADV. SRI.T.KRISHNANUNNI (SR.ENGAGEMENT)
SRI. K.SALIL NARAYANAN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

M.N.KRISHNAN, J

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W.P.(C) No.25753 OF 2007

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Dated this the 5th day of September 2007

JUDGMENT

This writ petition is preferred against the order passed by the Sub Court, Kozhikode in I.A.Nos.2377 & 2378 of 2007 in O.S.No.373 of 2006. I.A.No.2377 is an application for impleadment and the other I.A. is for amendment of the plaint. The suit is one for partition filed between the brothers. It is the case of the plaintiff that he is entitled to equal right over the property. By virtue of the amendment he wants to incorporate a pleading that the contention of the defendant that he had parted with his right by virtue of a document of the year 1997 is not true and genuine. In effect he admits the execution of the document, but would allege that it is vitiated under the provisions of the Contract Act. According to him, he has come to know about the text of the document only on inspection when the same was produced before court. It is true that since the plaintiff has admitted the execution of the document he should have been more vigilant even at the time of the institution of the suit. The dispute can be resolved only after the consideration whether the document executed by the plaintiff in favour of

the defendant's wife is bad for the grounds stated by him. The learned Sub Judge has relied on various decisions of this court as well as the Apex Court and had also borne in mind the right of the defendant and therefore he has specifically stated in the order that the amendment will only relate back from the date of petition filed for amendment and not from the date of suit. Being a document of the year 1997 and if the plaintiff is aware of the contents of the document, then naturally the question of limitation may loom large in such cases. I am not expressing any opinion on the merits or demerits of the case. But the question of limitation, if raised in the additional written statement is a matter which has also to be considered by the court below. In order to determine that question it is also necessary that the person in whose name the document stands is also a necessary party and she may also be heard in the case.

Therefore I do not find any illegality committed by the court below in impleading the wife of the defendant as well as allowing the amendment application. Needless to say that the new impleaded party as well as the defendant can raise all the contentions which they want to raise regarding

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the nature of transaction, limitation, etc.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-